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Judge: Honorable Whitman L. Holt
Chapter 7

IN THE U.S. BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF WASHINGTON

In re

SOLEADOS ESATES, LLC

Debtor.

Case No.: 23-00196-WLH7

RESPONSE TO MOTION FOR
CONTEMPT AND DAMAGES FOR
VIOLATIONS OF THE AUTOMATIC
STAY

I. INTRODUCTION & RELIEF REQUESTED

COMES NOW Spartan Business Solutions, LLC (“Spartan”), by and through its attorneys of record Schweet Linde & Rosenblum, PLLC, and responds to the Motion for Contempt and Damages for Violations of the Automatic Stay (sic) (“Motion”), Dkt. 6¹, filed by Soleados Estates, LLC (“Soleados”). The Motion is not well taken, as the sole basis for the relief requested

¹ An identical submission of the Motion and related documents was made in the consolidated cases of *In re Sullinair Jet Center, LLC* (Case No. 22-00933-WLH7) that was ordered administratively consolidated with *In re Pasco FBO Partners, LLC* (Case No. 22-00934-WLH7).

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FOR VIOLATIONS OF THE AUTOMATIC STAY – 1

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1 §362(k)²³, does not authorize an award of any type to a non-individual entity under controlling 9th
2 Circuit precedent.

3 II. JURISDICTION & VENUE

4 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. This
5 matter constitutes a “core” proceeding pursuant to 28 U.S.C. §157(b)(2)(A). Venue is appropriate
6 in this Court pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicate for the Motion
7 appears to be §362(k).
8

9 III. STATEMENT OF FACTS

10 The factual background of the events giving rise to the issue before the court are detailed
11 in the Declaration of Matthew Green, Dkt. 12, and the Declaration of Jason Gang, Dkt. 13. Those
12 declarations, including exhibits, are hereby incorporated herein as though fully set forth.
13

14 IV. ISSUE

15 Whether Soleados is entitled to any relief under §362(k)?
16

17 V. ARGUMENT

18 A. Soleados Lacks Standing to Seek the Relief Sought in the Motion.

19 The filing of a Chapter 7 bankruptcy of a corporate entity vests operation of the
20 management of said entity in the appointed Chapter 7 Trustee, and former management has no
21 further rights or duties, other than to provide property and information to the appointed Chapter 7
22
23

24 ² All Chapter and Section references herein are to the United States Bankruptcy Code, 11 U.S.C. §§101-1532, unless
25 otherwise specified.

26 ³ This response presumes the Motion references §362(k) by its pre-BAPCPA subsection §362(h), as current §362(h)
does not reference “willful violations” but rather relates to the implications for the stay vis-à-vis a debtor’s
statement of intent.

1 Trustee. *Commodity Futures Trading Com'n v. Weintraub*, 471 U.S. 343, 352-352 (1985)
2 (“Weintraub”).

3 Though *Weintraub* was decided in the context of control over the assertion of the attorney-
4 client privilege of a Chapter 7 bankrupt debtor, the logic underpinning that decision, in particular
5 the reliance on the legislative history that upon the commencement of Chapter 7 for a corporate
6 entity that the prior directors are “completely ousted,” *Id.* (quotations in the original), is equally
7 applicable here where the prior director is attempting to assert a claim for an alleged violation of
8 the Automatic Stay.
9

10 Because Soleados lacks standing to seek the relief sought in the Motion pursuant to 362(k)
11 the Motion should be denied.

12 **B. The 9th Circuit Has Held Only Individuals Are Entitled to Damages Pursuant to**
13 **§362(k).**

14 The filing of a bankruptcy petition imposes a stay on most collection actions by creditors.
15 §362(a). Parties violating the stay can, in certain circumstances, be liable to a debtor for actual
16 damages for a stay violation, which can include attorney fees, if the aggrieved party is an
17 individual. §362(k). The term “individual” does not include corporation or other business entities.
18 *In re Goodman*, 991 F.2d 613, 619 (9th Cir. 1993) (holding the term individual does not include
19 business entities relying on the definition of “person” found at 1 U.S.C. §1).
20

21 In *Goodman*, the 9th Circuit specifically addressed the question of whether or not damages
22 are available under §362(k), and adopted a Brightline rule that business entities are not
23 “individuals” for the purpose of §362(k) and are therefore not entitled to relief under that statute.
24

25 *In re Goodman*, 991 F.2d at 619-620. The holding of *Goodman* was extended to bar Chapter 7
26 Trustee’s from recovering damages under §362(k) as well. *In re Pace*, 159 B.R. 890, 903-904 (9th

1 Cir. B.A.P. 1993). This is true despite panel trustee's being natural persons because the Trustee
2 was acting solely for the benefit of an artificial entity, the bankruptcy estate. *Id.* at 904.

3 In the present case, Soleados is unquestionably not an individual, as that term is defined
4 for application of §362(k). Because only an individual is entitled to relief under that section, the
5 relief sought in the Motion should be denied.

6
7 **C. Soleados Has Not Submitted Any Justification for the "Damages" It Alleges to Have**
8 **Suffered.**

9 To the extent Soleados is entitled to relief, they have not presented any evidence to support
10 the amount of damages they seek. Indeed, there is no allegation of actual damages in the
11 Declaration of John A. Sullins Re: Motion for Contempt Damages for Violations of the Automatic
12 Stay ("Sullins Dec."). Dkt. 7. The Sullins Dec. simply attaches as Exhibit E an itemization of
13 alleged damages on a "per incident" value of \$1,000. The Sullins Dec. goes on to assert attorney
14 fees damages for 10 hours of work by Mr. McBurney, counsel for both Soleados and the two
15 debtors in this consolidated Chapter 7 proceeding. No description of what "research" was
16 conducted for 1 hour, but presumably that research should have alerted counsel to the *Goodman*
17 and its progeny that clearly limit Soleados ability to recover, as detailed above, and no authority,
18 save a reference to §362(k) is mentioned in the Motion itself. Finally, there is nothing in the record
19 to justify Mr. McBurney's proposed rate of \$500/hr. as being reasonable under the *Lodestar*
20 method.
21

22 Simply put, Soleados has not established any damages it has actually incurred, to the extent
23 they can even seek to utilize the remedy offered individuals under §362(k).
24

25 **VI. CONCLUSION**

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1 For the reasons outlined above, Spartan respectfully requests this court enter an order
2 denying the motion.

3 DATED: May 10, 2023

4 **SCHWEET LINDE & COULSON, PLLC**

5 /s/Michael M. Sperry /

6 Michael M. Sperry, WSBA #43760

7 Attorneys for Spartan Business Solutions, LLC
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